

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**RICHARD RODRIGUEZ,**

**Petitioner,**

**v.**

**Civil Action No. 5:07cv104  
(Judge Stamp)**

**WARDEN USP HAZELTON,**

**Respondent.**

**OPINION/REPORT AND RECOMMENDATION**

The petitioner initiated this § 2241 habeas action on May 31, 2007, in the United States Court of Appeals for the District of Columbia. August 14, 2007. Because the petitioner is incarcerated within at the Hazelton Penitentiary in Bruceton Mills, West Virginia, the case was transferred to this Court on August 8, 2007. Although the petitioner sought permission to proceed as a pauper, the petitioner failed to provide the court with the appropriate financial forms for making such a determination. Therefore, on August 15, 2007, the Clerk sent the petitioner a deficiency notice advising him that he had 30 days to file a Prisoner Trust Account Report ("PTAR").

Despite sufficient notice, a review of the file as of this date shows that the petitioner has not filed a PTAR or the ledger sheets from his inmate account which allow the Court to determine the petitioner's eligibility to proceed as a pauper. Further, the petitioner has not requested additional time to do so, nor otherwise explained the reasons for non-compliance. Therefore, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, it is the undersigned's recommendation that the petition be **DISMISSED without prejudice** for the failure to prosecute.

Within ten (10) days after being served with a copy of this Opinion/Report and

Recommendation, any party may file with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections shall also be submitted to the Honorable Frederick P. Stamp, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket. The Clerk is further directed to provide copies of this Opinion/Report and Recommendation to all counsel of record, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: October 18, 2007.

/s John S. Kaull

JOHN S. KAULL  
UNITED STATES MAGISTRATE JUDGE